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U.S. Department of Homeland Security

Bureau of Citizenship Services and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: EAC 01 263 53046 Office: Vermont Service Center Date: MAY 28 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a religious school. It seeks to employ the beneficiary permanently in the United States as a specialty cook. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

On appeal, counsel submits additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's continuing ability to pay the wage offered beginning on the priority date, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the request for labor certification was accepted for processing on January 14, 1998. The proffered salary as stated on the labor certification is $34,379.80 per year.

With the petition, counsel submitted no evidence of the

petitioner's ability to pay the proffered wage. Therefore, on January 25, 2002, the Vermont Service Center requested evidence pertinent to that ability. Specifically, the Service Center requested (1) the petitioner's income tax returns for 1998 and 1999, Form 990 Return of Organization Exempt from Income Tax for 1998 and 1999, or a current financial statement, (2) W-2 forms or 1099 forms for all employees and contractors employed by the petitioner during 1999 and 2000, (3) the petitioner's bank statements for each month of 2000 showing the months' ending balances, and documentary evidence of all the beneficiaries for whom the petitioner had filed petitions, including the positions for which they were hired and proof that their salaries had been paid.

In response, counsel submitted a copy of a 2001 Form W-2 wage and tax statement showing that the petitioner paid $14,586.52 to the beneficiary in wages during that year and copies of the petitioner's Form 941 Employer's Quarterly Federal Tax Returns for all four quarters of 2000 and 2001. Counsel did not submit W-2 forms pertinent to 1999 as requested, and submitted no W-2 forms pertinent to any employee other than the beneficiary, although the Service Center requested W-2 forms pertinent to all employees.

In addition, counsel submitted a letter from the petitioner's administrator, dated April 17, 2002, naming three other beneficiaries for whom the petitioner had filed petitions. Counsel did not specify which of those petitions had been approved or submit any evidence pertinent to whether the proffered wages in those cases had been paid, although the Service Center requested that information.

Further, counsel submitted a letter from the petitioner's accountant, dated April 17, 2002, stating that the petitioner, a religious organization, is not required to file a tax return. Counsel did not, in the alternative, submit copies of the petitioner's Form 990 Return of an Organization Exempt from Income Tax or a current financial statement as the Service Center requested.

Counsel did not submit the requested bank statements.

On July 12, 2002, the Director, Vermont Service Center, denied the petition. The director noted that the Service Center had requested documents pertinent to 1998 which had not been submitted. Because the evidence pertinent to 1998 had not been submitted, the petitioner had not demonstrated its ability to pay the proffered wage during that year.

On appeal, counsel submitted the petitioner's Form 941 Employer's Quarterly Tax Returns for all four quarters of 1998 and 1999.

The quarterly tax returns submitted on appeal show the wages which the petitioner paid to employees during 1998 and 1999. However, they do not demonstrate that the petitioner had the additional $34,379.80 necessary to pay the proffered wage. Pursuant to 8 C.F.R. § 204.5(g)(2) the petitioner is obliged to show the continuing ability to pay the proffered wage beginning on the priority date with copies of annual reports, federal tax returns, or audited financial statements. The petitioner has submitted no such evidence.

The petitioner has submitted no evidence to demonstrate its ability to pay the proffered wage. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.